

### **DETAILED ACTION**

1. This office action is in response to the amendment filed 9/14/09. As directed claims 1, and 3-12 were amended, claims 13 and 14 were added and no claims were cancelled. Therefore claims 1-14 are currently pending.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 5 recites the limitation "the operating system of the PDA" in the forth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stenzler (6,435,175) in view of Grey (7,111,756).

7. Regarding claims 1-5 and 13, Stenzler discloses an aerosol therapy device having a nebuliser unit (50, 70) and a control unit (4) in which the nebuliser unit comprises a controllable aerosol generator comprising an inhalation sensor (58), for

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generating therapy related data (column 3, lines 66-67; column 4, lines 1-5), a programmable chip (76) that sends data to the control unit (4) via a data line (60) and a means (98) to actuate the electrically operated membrane aerosol generator (100) (column 4, lines 63-65) from data received from the control unit (4). The control unit (4) comprises communication devices (60,158) for receiving and transmitting data to and from the nebuliser unit (column 6, lines 23-24) and a device for generating control data that comprises a microprocessor (150) that processes data from the sensor (58) and transmits control data to the nebuliser to actuate the pump (column 5, lines 47-50; column 7, lines 8-10) and a card reader microprocessor (152) (column 5, lines 61-62). Stenzler does not disclose that the control unit is a PDA. Grey teaches a dose dispensing apparatus wherein a PDA is in communication with a hand held dispensing device (column 3, lines 30-34), wherein the dispensing device could include an infrared communications port (column 3, lines 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the aerosol therapy device of Stenzler with a PDA control unit as taught by Grey in order to provide the advantage of using a common programmable computing device to control the device.

8. Regarding claims 6, 7, and 8, Stenzler discloses microprocessors (150, 152) and storage units (154) that are programmed to process data from the inhalation sensor (58) and information storage element (78) and control the functions of the device by communicating with components of the device (column 5, lines 47-67).

9. Regarding claim 9, Stenzler discloses a displace unit (10) that is controlled by the control unit (150) (column 6, lines 35-37).

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10. Regarding claims 10 and 14, Stenzler discloses a telecommunication module (32) for a remote data connection (column 3, lines 40-47) that could include the internet (column 7, lines 48-55).

11. Regarding claim 11, Stenzler discloses an information storage element (76), analogous to a memory card, which can be programmed with medicine and dose information (column 4, lines 20-39) and is read by a card reader (152) on the control unit (4).

12. Regarding claim 12, the combination of Stenzler and Grey discloses the claimed invention wherein a control means (57) of the dispenser, as taught by Grey, allows activation of the dispenser (1) when it is not in receiving any control data from the communication device of the PDA (column 5, lines 53-63).

### ***Response to Arguments***

13. Applicant's arguments filed 9/14/09 have been fully considered but they are not persuasive. Applicant's arguments regarding the control unit of Stenzler not being equipped with a communication device for receiving therapy data transmitted by the nebuliser and for transferring control data to the nebuliser is not persuasive as the device of Stenzler does have a communication device for receiving therapy data transmitted by the nebuliser, in the form of a signal from the sensor in the nebuliser, and for transferring control data to the nebuliser, in the form of an actuation signal for the pump.

### ***Conclusion***

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14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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